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The rights of stockholders in rail-road corporations...

New York

1852

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THE RIGHTS [illegible]CKHOLDERS

RAIL-ROAD [illegible]ORPORATIONS

CONSIDERED.

THE POWER

OF

THE DIRECTORS, OR ANY MAJORITY OF THE CORPORATORS,
OR OF THE LEGISLATURE, TO AUTHORIZE
A SUBSCRIPTION TO THE

Great Western Rail-Road, Canada West,

AGAINST THE OBJECTION OF ANY STOCKHOLDER,

DENIED.

OPINION

OF THE

COURT OF CHANCERY OF VERMONT,

IN A SIMILAR CASE,

AFFIRMING THIS DOCTRINE.

New-York:
VAN NORDEN & AMERMAN, PRINTERS,
No. 60 William-street.

1852.

STATEMENT.

At the session of the Legislature held last year, an act was passed, authorizing any rail-road Corporation in this state to subscribe for, and hold stock in the Great Western Rail-Road, Canada West, or to loan its credit to that Corporation, to an amount equal to 5 per cent. upon its capital stock, upon first procuring the assent in writing of parties owning or representing two-thirds in amount of the capital.

Under this authority the rail-road Companies whose lines extend from Albany to Rochester, have determined to take stock in the proposed Canada Road, and are about proceeding to make the subscriptions, notwithstanding the well-known opposition of a portion of the Directors, and of a large and respectable minority of the stockholders of the various companies.

Many of these stockholders, verbally and in writing, have objected to their property being thus appropriated, and have expressly dissented from the proposed subscription, it being calculated to impair the value of their investment; and they deny that any majority of the Directors, or any majority of the stockholders have authority to divert any portion of the funds or earnings of these Companies to a speculation in Canada, without the consent of all the stockholders; and they hold that the Legislature could not constitutionally confer any such authority.

A similar question has recently arisen in Vermont. The Rutland and Burlington Rail-Road Company, originally incorporated to build a road between two specified points,

obtained an amendment of their Charter, permitting them to extend their road 30 miles further. A majority of the Directors, and a majority of the stockholders consented to accept the amendment, and the Company proceeded to construct the road; but a stockholder, who dissented from the arrangement, filed his bill in the Court of Chancery of Vermont for an injunction restraining the Corporation from applying its funds, or pledging its credit for the purpose of constructing the road.

The court, after hearing the cause twice argued, in an able and elaborate opinion which is herewith published, sustained the bill, and allowed the injunction restraining the Corporation from applying any of its funds, or any of the income from its present road, either directly or indirectly, to building such extension, or pledging its credit for that purpose.

The Court held that any law of the Legislature whereby permission was granted to the Corporation to apply its funds or income, or pledge its credit for that purpose, and thereby to bind the stockholders who dissented from it, would be *unconstitutional*. The Court say:—

"The act is not mandatory; and there is, in fact, an implied condition annexed to it, that it is to be accepted by all whose individual and corporate interests are to be affected by it, before it shall become operative. But suppose this act had been mandatory upon the Corporation and the several stockholders, to build this extension in the road within three years, would not all cry out against its palpable injustice? Suppose, instead of this, the Legislature had left it optional with the Corporation to accept or reject the act of 1850, and had provided, in the case of the acceptance of the amendment by the Corporation, it should bind the corporators who dissented from it, or did not assent to it, and this, too, in their individual rights; would there not be the same reason to cry out against it? Would it not, by its carrying a stockholder into an enterprise which he had never consented to, and changing the principles of liability between the Corporation and the individual corporator, from what they were under the original compact, impair and disturb vested rights under it? I have no hesitation in saying, that, in my opinion, it would be beyond the pale of the constitutional authority of the Legislature."

This opinion is conclusively sustained, both upon principle and authority, and it is worthy of the careful consideration of all who have investments depending for their value upon the laws, and their faithful administration.

Some of the stockholders in the Rail-Road Corporations in question, have been compelled to resort to the Courts of this state for protection, and have obtained injunctions prohibiting the Rail-Road Company from making the subscriptions to the Canada Road. The law permitting these Corporations to engage in that enterprise, and thereby to bind stockholders who object to it, is so clearly unjust, that it would seem to be the duty of the Legislature to repeal it, or so to modify it as to protect the rights of every stockholder, and relieve them from the necessity and expense of a resort to the legal tribunals.

Some articles which appeared in the public prints on this subject last season, are herewith republished.

New-York, February, 1852.

BYRON STEVENS

vs.

THE RUTLAND AND BURLINGTON RAIL-ROAD COMPANY AND OTHERS.

THIS is a bill preferred before the Chancellor of the third Judicial Circuit, of the state of Vermont, against the Rutland and Burlington Rail-Road Company and three of its Directors, by a stockholder in the Company; the object of which is to obtain an injunction against the defendants, restraining them from applying the funds of the Corporation, or pledging its credit, for the purpose of constructing a rail-road from Burlington, in the county of Chittenden, to Swanton, in the county of Franklin.

It appears that the Legislature of this state, at their session, in 1843, granted a Charter of Incorporation to divers individuals, and to their successors, for the purpose of building a rail-road from some point to Burlington, through the counties of Addison, Rutland and Windsor or Windham, to some point on the west bank of the Connecticut River, under the name of the Champlain and Connecticut River Rail-Road Company. This name was subsequently changed by the Legislature to the Rutland and Burlington Rail-Road Company. The Charter, among other things, provides that the capital stock of the Company shall be one million of dollars, with the right in the Corporation to increase it to an amount sufficient to complete said road, and furnish all necessary apparatus for conveyance. The Company, after having procured some minor amendments to the Charter, which it is not necessary to notice, caused the books to be opened, the stock to be

taken, and organized in due time, under the law, and have caused the road to be constructed, and it has for some time been in successful operation. The plaintiff, upon opening the books, subscribed for five shares of the capital stock, has regularly paid his subscription, each share being one hundred dollars, and he has ever since been the owner of said shares. After this road was constructed, and while in operation, the Legislature of this state passed an additional act to authorize this Corporation to extend their rail-road, at any time within three years, from Burlington to Swanton, in the county of Franklin, it being a distance of about thirty miles. This additional act also provides, that the Corporation, in the construction of this extension, shall have all the rights and privileges, and be subject to all the liabilities contained in the original Charter, and the previous supplementary acts. The orator then proceeds to allege, that the Directors, who are made parties to this bill, and without authority from the Board of Directors, or from the Corporation, and without any previous notice, and in bad faith, and for the purpose of prejudicing the interest of the shareholders, procured the Legislature to pass this additional act of 1850, and have caused it to be accepted by the Board of Directors; and that the Directors have caused a meeting of the stockholders to be called, to see if they will accept of this act as an amendment of their Charter; and that they threaten, if this act shall be accepted by a majority of the Corporation, that they will proceed immediately in the construction of this extension, and for that purpose will apply the funds and pecuniary resources of the Corporation, and pledge its credit, to whatever extent they shall find it necessary, to effect the object; and this, too, without the consent and against the will of the minority of the stockholders, and particularly of the orator, who alleges that he has not and will not consent to accept of said act of 1850, and construct said extension, and that he has, ever since the passage of the act, requested the defendants to desist from the same.

These are the material facts stated in the bill, which has been verified by affidavit. No affidavits have been filed on the other side, and no application for a delay of the hearing for the purpose of answering the bill; and since it has been pending before the Chancellor, it appears the Corporation, at a meeting previously called for that purpose, have voted to accept of the act of 1850 as an amendment of their Charter.

The question is, can the orator, upon such a state of facts, claim, at the hands of the Chancellor, his injunction?

It is an admitted principle, that in partnerships and joint stock associations, they cannot, by a vote of the majority, change or alter their fundamental articles of copartnership or association, against the will of the minority, however small, unless there is an express or implied provision in the articles themselves, that they may do it. It is equally well settled, that a Court of Chancery will, upon the application of an individual member of a partnership or joint stock association, restrain, by injunction, the majority from using the funds or pledging the credit of the partnership or association in a business not warranted, and not within the scope of their fundamental articles of agreement. Courts of equity treat such proceedings by a majority, as a fraud upon the other members, which they will neither sanction or permit. To prevent the commission of fraud, by injunction, has been one of the earliest and most appropriate heads of equity jurisdiction, as well as to relieve against it, when committed. It was upon this principle that Lord Eldon, when High Chancellor, upon the application of a humble individual member of a company which had been organized for the purpose of carrying on a Fire and Life Insurance business, restrained the Company, by injunction, from embarking also in the Marine Insurance business, though the applicant had paid into the funds of the Company only £150, as a deposit upon fifteen shares; and the company gotten up by the Rothschilds of England, and composed of six or seven hundred individuals, with a capi-

tal of five millions sterling. See Natusch vs. Irving and others, *Gow on Part.*, Appendix, p. 576. The same principle was applied to a Corporation by the Vice-Chancellor, and by Lord Chancellor Brougham, in the case of Ware vs. The Grand Junction Water Company, 2 *Rus. & Mylne*, 461. *S. C. Cond.* 13 *Ch. Rep.*, 126. The Vice-Chancellor, upon the application of a single shareholder, restrained the Corporation not only from embarking their funds and credit in a matter beyond the provisions of their Charter, but also from applying to Parliament for a change in the Charter, which would warrant it. The change desired to be made in that case was, that the Company might be enabled to get their supply of water by means of an aqueduct from the river Colne, instead of the river Thames, as authorized to do under their original Charter. Lord Brougham, on appeal, dissolved that part of the injunction, it is true, which restrained the Company from applying to Parliament for an alteration of the Charter in the particular desired, but retained the residue of it. So in Cunliff vs. The Manchester and Bolton Canal Company, 13 *Cond. Equity Rep.* 131, n., the Vice-Chancellor restrained the Corporation, upon the application of a shareholder, from applying to Parliament for a change in their charter, to enable them to convert a portion of their canal into a railway, and from applying any of the corporate funds to the proposed object.

It was well conceded, in the argument on the defence, that if the Corporation had been about to proceed to a construction of the contemplated extension without the act of 1850, it would have been a proper case for an injunction. The only question which can be open to debate is, as to what shall be the effect of the act of 1850, and a subsequent adoption of the act by the Corporation, upon the individual rights of a shareholder, who does not assent to its adoption? If bound by it, there is no equity in this bill. It is, and must be admitted, that the Legislature have no constitutional power, unless it be reserved in the grant, to change or alter

an act of incorporation without consent, and thereby cast upon the Company new and additional obligations, or take from them rights guarantied under the original Charter. And, indeed, this the Legislature have not attempted to do. It is also equally true, that it is a part of the law of corporations, that they act according to the voice of the majority. But it is to be remembered, that this is not a suit in which the plaintiff seeks to protect himself in any corporate right, but in his own individual right, growing out of the fact of his having become a corporator, by his subscription and its payment, to the capital stock of the Company. One of an aggregate corporation may contract with the Company, as well as a third person; and the rights of the individual so contracting are no more distinct and independent in the one case than in the other. The plaintiff, by his subscription, assumed to pay to the Corporation, and only for the purpose specified in the Charter, its amount, according to the assessments, and there was at the same time a trust Created, and an implied assumption on the part of the Corporation, to apply it to that object and none other. The Corporation also assumed upon themselves to account to this corporator for his share of the dividends, when this road should be completed and put in operation; and for his share of capital stock, though not *in numero*. The Charter, in this case, gives to the state the right to purchase out the road of the Corporation, after a given number of years, upon certain terms therein specified. The relation between each original shareholder and the Corporation is the same. The obligation of the contract between the Legislature and the Corporation, after an acceptance of the Charter, is no more sacred than that which is created between the Corporation and the individual corporator. Does any one suppose the Legislature could, without the consent of parties, absolve a corporator from liability on his subscription to the Corporation, or modify it? and can they do the reverse of it? It is conceded that there is a class of alterations in a Charter which the Corporation may obtain

and adopt, that would not so essentially change the contract as to absolve the corporator from his subscription, or give him a right to complain in a court of justice, in case he had previously paid it.

When the object of the modification or alteration of the Charter is auxiliary to the original object of it, and designed to enable the Corporation to carry into execution the very purpose of the original grant, with more facility and more beneficially than they otherwise could, the individual corporator cannot complain; and I should apprehend it would make no difference with the rights of a Corporation in such a case, though he could show that the Charter, as amended, was less beneficial to the corporators than the original one would have been. The ground upon which such amendments bind the corporator, I deem to be his own consent. When he becomes a corporator by his signing for a portion of the capital stock, he in effect agrees to the by-laws, rules and votes of the Company, and there is an implied assent, on his part, with the Corporation, that they may apply for, and adopt such amendments as are within the scope, and designed to promote the execution of the original purpose; and he signs, and the Corporation receives his subscription, subject to such implied contingency; and if we regard it in the nature of a license only, it would not alter the principle. Both parties having acted upon it, it would not be countermandable.

But suppose the object of the alteration is a *fundamental* change in the original purpose, and designed to superadd to it something which is beyond and aside of it; does the same principle apply? In the case of The Union Lock and Canal Company vs. Towne, 1 *N. H. Rep.* 44, the Company, under an act of the Legislature of New-Hampshire, passed Dec., 1808, were incorporated for *the purpose* of rendering the *Merrimack* river navigable from *Reed's Ferry* to *Amoskeag Falls;* and in this Charter the Company were authorized to purchase and hold real estate not exceeding six acres, and to exact and collect toll for a period of forty

years only, at a rate not averaging more than twelve per cent. per annum on the capital stock invested. In June, 1809, (the 23d,) the Legislature passed an additional act, which took off all limitation as to the rate of toll and time of its duration, and authorized the Company to purchase and hold real estate not exceeding one hundred acres. In 1812 the Legislature passed another act, conferring the right upon J. L. Sullivan and others, to *lock Cromwell Falls*, on the same river, which was a point not embraced within the termini of the act of 1808; but in other respects the acts were similar; and in this act, Sullivan and his associates were authorized to transfer the Charter to the Union Lock and Canal Company, so as to be considered a mere addition to that Charter. It was transferred and accepted in August, 1813. The act of June, 1809, was passed upon the petition of the Corporation, and the defendant became a member of the Corporation in that summer; but whether before or after the 23d day of June, (the day of its passage,) does not distinctly appear; though the court say, from the declaration, it appears all the assessments were made after that date, and a part after the passage of the act of 1812, and the acceptance of it. It became material to pass upon the effect of both acts. The court, in a well considered opinion given by Judge Woodbury, held that each of the subsequent statutes created such a fundamental change in the original Charter as to absolve the defendant from all liability for assessments made after the passage of the additional acts, there being no evidence to show that he had ever personally assented to them.

In the Middlesex Turnpike Corporation vs. Lock, 8 *Mass. Rep.* 268, the court held that a variation and change in the course of the turnpike road from that which was prescribed in the original Charter, was such a fundamental alteration as to absolve the subscribers from the payment of assessments made after the amendment to the Charter upon a subscription for stock made before. The supplementary

act in that case was passed upon the application of the Directors of the Company, with the assent of the Corporation, at a meeting duly called for that purpose; and the alteration proposed in the act, was in the course of the turnpike road from Bisket Bridge, in *Tyngsboro'*, to the Fork, in *Bedford*. The court say, that the defendant was not bound by the application of the Directors to the Legislature for the alteration, nor by the consent of the Corporation thereto; and that much fraud might be put in practice under a contrary decision. The court did not decide but what the Corporation had still remaining in them the legal right to sell the shares in such a case; but it would be indeed an idle remedy, in a case where nothing had been paid, as in that. Besides, the purchaser would come in under the Charter, as amended.

The case of the same Company vs. Swan, 10 *Mass. Rep.* 384, arose under the same Charter, as amended, and was brought to recover assessments on Swan's subscription, made after the amendment. The case differed from the one in the 8th vol. in this: Swan was a Director in the Company, and joined in the application to the Legislature for a change in the Charter; and when it was claimed by the counsel that that fact, in connection with the fact that he was officially concerned in making the road under the amended Charter, was equivalent to an individual assent to the amendment, and bound him personally, the court say they cannot admit the soundness of the position. They say that in the promise upon which the action is brought, the defendant stands as an individual, and in the promise, referred himself to what the Legislature had done, not to any probable subsequent grant; and that there is no express consent to the change, and none can be implied; for the defendant might have been controlled by the will of the majority, or if he concurred in the votes and proceedings of the Corporation, it was as a corporator, not carrying with it his individual concurrence; and judgment was entered up for the defendant. It might perhaps be thought

that this was spinning rather fine; but we have no occasion to pass upon the soundness of the view taken in this particular. See, also, the same plaintiff vs. Walker, 10 *Mass. Rep.* 390. I cannot see that the case of Revere vs. The Boston Copper Company, 15 *Pick. Rep.* 351, 363, cited by the defendants' counsel, makes for them, but rather the reverse. The object of the suit was to recover an indemnity, which the plaintiff claimed he had sustained in consequence of the defendants' refusal to employ him, and pay him a salary agreeably to a special promise which he had made with them, which by its terms was limited to the time for which the Corporation was established, provided the plaintiff should so long live, and continue to perform his part of the agreement. The plaintiff was a stockholder, and took charge of the business as the agent of the Company. The business of the Company proved unprofitable, after a trial of more than four years, and a majority of the Corporation voted to dissolve the Company, and wind up its concerns; and for that purpose appointed trustees, and assigned their effects. They also *discharged* the plaintiff from their service, and gave notice to the executive department of the Government, that they claimed no further interest in the Charter. By the by-laws, the officers held their offices for one year, and until others were appointed. The court said, the Corporation was not dissolved; and that the plaintiff, though one of the Corporation, was not bound by the vote of the majority. So far as an aggregate corporator, he might be bound, they say; but treating him as an *individual*, with *individual rights*, he was not bound by the majority vote. This is a strong case to show the distinction, and the plaintiff had his damages allowed him after he was discharged by the majority vote, by reason of the defendants' refusing to employ him.

The case of the Hartford and New-Haven Rail-Road Company vs. Croswell, 5 *Hill*, 385, has an important bearing upon the one before us. The amendment in that case to the original Charter, authorized the defendant to purchase,

hold and run upon the Sound, steamboats, in connection with their railway, and gave the Company for that purpose, an increase of capital not exceeding $200,000. This seems to be nothing more or less, so far as principle is concerned, than an *extension* of the *terminus* of the road at New-Haven, by steam power, on the rail-road which the God of nature has made, instead of a rail-road by land, constructed by the art of man. This amendment was accepted both by the Directors of the Company and by the Corporation, convened for that purpose; and yet it was held that the alteration was *fundamental*, and absolved the defendant from all liability for the assessments on his stock, there being no evidence that the defendant had personally assented to an acceptance of the amendment. In that case the assessments were made, and had become payable, and had been demanded of the defendant, before the amendment of the Charter. Ch. J. Nelson, in his opinion, lays down this general proposition, "that Corporations can exercise no power over the corporators, beyond those conferred by the Charter to which they have subscribed, except on the condition of their agreement or consent."

This is a sound proposition. The consent or assent may, however, be *implied* in a class of cases, as has already been stated, where the amendment is not regarded as *fundamental*, and can be brought within the scope of the original purpose of the association; and this is going to the very verge of the powers of the Corporation. It is difficult, and would be unwise, to attempt to lay down any general rules to determine in what precise cases the assent of the corporator should be implied, and in what not. It is sufficient for the present purpose to say, that his assent cannot be implied in a case like the present, from a majority vote. Courts may differ, and doubtless will, in regard to what alterations shall be sufficient to constitute a fundamental change. But in the present case, I think, on this point there can be but one opinion. The *termini* of the road, as fixed by the Charter, are Burlington, and some point on the

west bank of Connecticut River, in the county of Windsor or Windham. The capital stock is one million of dollars, with a right in the Corporation to increase it to an amount sufficient to complete said road, and furnish the necessary apparatus for conveyance. The supplementary act of 1850 purports to authorize the Corporation, within three years, to construct and extend their rail-road from the terminus in Burlington, to some point in Swanton, in the county of Franklin, a distance of about thirty miles; and the act provides that in the construction of the road, they shall have all the rights and privileges, and be subject to all the liabilities contained in their original Charter, and the acts in addition to it.

The franchise granted to this Company was territorial; and an extension of the termini necessarily is an extension of the franchise. It cannot remain the same thing in substance, until it can be established that a part is equal to the whole. Besides, the Company may increase the capital stock to such additional sum as shall be necessary to construct the extension.

The statute of 1850 is little less in effect, if any thing, than an attempt to create, in a summary manner, and by way of reference, a new Corporation, and to transfer all the old corporators to it. If all the corporators had assented to this transfer, it was well enough. The change in the purpose was not more fundamental in the case from the 5th of *Hill*, than in this. It is not necessary that the business should be changed in kind, to change the original purpose. If this is not a change in purpose, it would not be to extend the road in one direction to Canada line, and in the other to Massachusetts line; and there would be no limits to the control which the Corporation might acquire over the individual corporators, and this, too, without their consent, except what arises from the confines of legislative authority.

The change, then, in the Charter, being *fundamental*, and the Corporation not being able to bind the plaintiff by a

majority vote, what must be the result? If he had been sued for an assessment upon his stock, he might have claimed that he was absolved from all liability upon the acceptance of the amendment. And is not this reasonable? Shall it be said that the Legislature and the Corporation have power to embark this corporator in a speculation to which he has never consented? If it can be done in one case, it can in another. But having paid his funds into the Corporation, he has a right in Chancery to compel a faithful performance of the *trust* by the Corporation, in conformity to the original Charter, and to keep them within its purview. No one can suppose, that upon the payment of his subscription, the personal identity of the plaintiff was merged in the Corporation, or that he ceased to have distinct and independent rights. In Rex vs. Eastern Counties Railway Company, 1 *Railway Cases*, 509, the King's Bench issued a mandamus, upon the application of a minority, against the Company, directing them to proceed in the construction of a rail-road, which had been chartered, between two points, the Corporation having stopped short of one of the termini, and voted to go no further.

In the case before us, it must follow, if the plaintiff is not bound by the conjoined effect of the act of 1850, and a majority vote of the Corporation, the defendants can stand on no better ground than a voluntary association, who are about to go beyond and aside of their original articles, against the will of a minority. This, in effect, was conceded in the argument. There was nothing improper in the passage of the act of 1850, though upon the application of a portion of the Directors of the Company, as stated in the bill. No attempt is made by the Legislature to impair the obligation of any contract between themselves and the Corporation, or to cast upon the Company any new and additional burden without their consent. There was no attempt to impair any contract arising under the prior Charter, between the Corporation and the corporator as an individual, or disturb any vested right in either. The act

is not mandatory; and there is, in fact, an implied condition annexed to it, that it is to be accepted by all whose individual and corporate interests are to be affected by it, before it shall become operative. But suppose this act had been mandatory upon the Corporation and the several stockholders, to build this extension in the road within three years, would not all cry out against its palpable injustice? Suppose, instead of this, the Legislature had left it optional with the Corporation to accept or reject the act of 1850, and had provided, in the case of the acceptance of the amendment by the Corporation, it should bind the corporators who dissented from it, or did not assent to it, and this, too, in their individual rights, would there not be the same reason to cry out against it? Would it not, by its carrying a stockholder into an enterprise which he had never consented to, and changing the principles of liability between the Corporation and the individual corporator, from what they were under the original compact, impair and disturb vested rights under it? I have no hesitation in saying, that, in my opinion, it would be beyond the pale of the constitutional authority of the Legislature.

In Ellis vs. Marshall, 2 *Mass. Rep.* 269, it was held that no man could be made, by act of legislation, a member of an aggregate Corporation without his personal consent; and the same principle would seem to apply, when he is asked to remain and become a corporator under a supplementary act, to be attached to and become a part of the Charter, where that which it is proposed to superadd is vital, and constitutes a fundamental change in the Charter, which is but the constitution of the Company.

The case of Gray vs. Monongahela Navigation Company in Errors, 2 *Watts & Sergeant*, p. 150, has been much relied upon in the defence. The purpose of the incorporation, as specified in the grant, was to construct a Lock navigation on the Monongahela River. In the Charter it was provided that the Company might raise their dams to a height not exceeding four and a half feet; and that

no one stockholder should have, to exceed ten votes. Some three years after the passage of the act, a supplemental act was passed, taking off the limitation as to the height of the dams, and permitting them to be raised to a height not exceeding eight feet, and providing that a shareholder of a given amount might have twenty votes: The plaintiff became a subscriber for stock soon after the Charter was given, and the action was for certain instalments. The alteration was at the request of the Directors. It was claimed, that the alteration changed a most essential feature in the original Charter, and would absolve the defendant below from all obligation to pay his assessments. But the court held otherwise, and I do not know that I should differ from them. In regard to the provision in respect to a change in the ratio of votes, the answer given by the Judge at the Circuit, in his charge to the jury, would seem to be conclusive. He says, it was to correct a palpable blunder in the first act, which made the section obscure and contradictory; and if the alteration disturbed the obligation of the contract, the act was so far void, and the contract left in force. The provision enlarging the license as to the height of the dam erected in the river, was evidently in furtherance of the object of the original grant, which was to construct a Lock navigation. It might well be said that the Corporation had an implied authority to obtain such an amendment to the original grant.

In this very case, Ch. J. Gibson says, if the amendment extended to a change in the structure of the association, it would have been fatal; and it was so held by that court in The Indiana and Ebensburgh Turnpike Company vs. Phillips, 2 *Penn. Rep.* 184. The change in the case of Irvin vs. The Turnpike Company, 2 *Penn. Rep.* 466, was in the location of a part of the road. This was held, by three judges against two, not to be such an alteration of the grant as to be fatal; and that an acceptance of the amendment by the Corporation would bind the individual corporators.

This case is opposed to the Massachusetts cases, and I am not called upon to say which I should be disposed to adopt. It is sufficient to say, that in the one case the court did not consider the alteration in the Charter as a fundamental change in the structure of the association; while in the other it was so considered. And as this preliminary question is determined, so the result must follow. I apprehend neither the case of Lincoln and Kennebec Bank vs. Richardson, 1 *Greenleaf*, 79, or of Foster et al. vs. The Essex Bank, 16 *Mass. Rep.* 245, has any material bearing upon the question, to show that the plaintiff was bound individually by the majority vote of this Corporation. In these cases, there had been a general law, extending the charters of incorporated banks for a specified time, and only for the purpose of their closing up their business. This law was attacked, as unconstitutional, by the Essex Bank, when sued by a creditor, after the expiration of their original Charter; and it was well held, that the law only went to the remedy for existing rights, and in no possible way changed or varied the contract of any of the parties, and it was binding upon the Corporation and the corporators, whether assented to or not.

The case of Ware vs. The Grand Junction Water Company, 13 *Cond. Chan. Rep.* 126, has been relied upon to defeat the equity of this bill. The Vice-Chancellor allowed a special injunction, in the terms of the prayer of the bill, the first branch of which restrained the Company from making any application to Parliament, or taking any other proceedings for obtaining such an alteration in the original Charter as was desired; and the second branch merely restrained them from carrying those alterations into execution, independently of such legislative sanction, or from using, or permitting to be used, the seal, name, funds, credit and officers of the Company, with a view to effect any such purpose, under their existing constitution. The Lord Chancellor supported the injunction of the Vice-Chancellor, so far as related to all such acts as were not authorized by

the then present constitution of the Company; but dissolved it so far as to permit the Company, as a qua-corporate body, to apply to Parliament for an alteration in their Charter so as to authorize the change desired, but restrained them from applying their corporate funds to that purpose. The Chancellor proceeded upon the ground that it was an incidental right in the corporators, as a qua-corporation, to apply for such a change; and that the plaintiff subscribed for stock subject to such a contingency; and that all the arguments touching the proposed change were proper for a committee of the House of Lords or Commons. He evidently goes upon the ground that Parliament is the proper place to meet the question; and that if Parliament decide to make the alteration proposed, it is binding upon all the corporators. I apprehend that the views expressed by the Lord Chancellor in that case, if sound, must rest upon one of two grounds: either that the change asked for in the Charter was not a fundamental one, or else upon the ground of the transcendent powers of a British Parliament. It is said, by Lord Coke, "that the power and jurisdiction of Parliament is so transcendental and absolute that it cannot be controlled or confined, either for causes or persons, within any bounds;" and in *Steph. Elec. Law*, vol. 1, p. 11, the doctrine is maintained that the Statutes of the Realm are binding upon all the subjects, unless they are repugnant to the laws of God; and that they can only be dispensed with by the same authority of Parliament with which they were made. And though other writers have maintained the ground that there are certain boundaries set to the exercise of even the supreme powers of a British Parliament, yet it is not necessary particularly to consider this subject. It is evident that Lord Brougham, in the case of Ware vs. The Grand Junction Water Works, grounds himself upon the sovereign and uncontrollable powers of the Parliament. The change in the Charter asked for in that case would, under most if not all the decisions in this country, be regarded as a fundamental one. The argument

of Lord Brougham, at least in one particular, does not seem very sound. He says: "The Company ought to have the power of obtaining an alteration in their constitution, or that the plaintiff ought to have come in as a member of it, under certain conditions and limitations." But would the conditions and limitations be more sacred than the constitution itself? and, if Parliament might change the constitution, might they not dispense with the conditions and limitations? See *Amer. Law Mag.* vol. 6, p. 93. But with us no Legislature can transcend the bounds of the constitution. It is not a constitutional tribunal to hear and settle the rights of the parties, as Lord Brougham seems to consider the British Parliament. I apprehend that in this state no Court of Chancery would restrain a Corporation from applying to the Legislature for a fundamental change in their Charter; and a sufficient reason would be, that if the additional power and authority changed the Charter of the original contract, and defeated the vested rights of the stockholders, the act would bind such of the stockholders only as consent to the alteration.

In the case of Coleman vs. Eastern Counties Railway Companies, 10 *Beavan's Rep.* p. 1, the Directors of the Railway Company, for the purpose of increasing their business, proposed to guarantee certain profits, and to secure the capital stock of an intended Steam Packet Company, who were to act in connection with the Rail-Road Company; and it was held not to be within their power; and they were restrained by injunction, upon the application of a shareholder, even though it appeared that the shareholder was suing at the instigation of a rival Company. The Master of the Rolls, Lord Langdale, says, that such a circumstance, in itself, was not sufficient to prevent the orator from obtaining a special injunction upon the merits of the case. In the recent case of Munt vs. The Shrewsbury and Chester Railway Company, 3d vol. of *English Rep. in Law and Equity*, p. 144, the defendants, by various acts of Parliament, were empowered to construct several railways,

and also to build wharves and warehouses, for the purpose of the traffic of the Company, upon the banks of the River Dee. The Railway Company brought a bill into Parliament, to empower them to improve the navigation of the River Dee, having no power to apply any of the capital of the Company to that purpose under the original Charter. Upon the application of a single shareholder, it was held that the Directors could not apply any of their funds in improving the navigation of the River Dee, or in payment of the expenses of getting a bill through Parliament for that purpose; and an injunction was granted to restrain them from so doing. In that case, it was a conceded fact, that the prosperity of the Railway Company depended materially upon the navigation of the river being kept in good condition, and that it was then in a state of deterioration; and the Company had actually expended two thousand pounds upon the river, before the bill was brought. The Master of the Rolls says: "So far as the power of a Court of Chancery extends, it has unalterably decided, that companies possessed of funds for objects which are distinctly defined by act of Parliament, cannot be allowed to apply them to any other purpose whatever, however beneficial or advantageous it may appear to be to the Company, or to individual members of the Company." The injunction not only stayed them from expending any further sums of money upon the river, but from applying to Parliament for an alteration of the Charter, at the expense of the Corporation.

In the 13th of *Eng. Cond. Rep.* 132, we have a short note of a case, following the note of the case of Cunliff vs. The Manchester and Bolton Canal Company, in which it is said, that soon after the bill was filed by Cunliff, one Maudsley filed his bill against the same Company, and for a similar object; and that the Vice-Chancellor overruled a demurrer to this bill; and that an answer was put in, and upon a hearing upon the merits, the bill was dismissed. What were the precise allegations in Maudsley's bill

cannot be ascertained from the note. All that is said is, that the bill was for a similar object as that of Cunliff. If the bill simply charged that the Company were about to apply, as a *qua*-corporation, to Parliament, for an act to convert a portion of the canal into a railway; and that they threatened, when such act was obtained, to apply their funds in changing the canal into a railway, the demurrer, upon the authority of the case of Ware vs. Grand Junction Water Company, was rightfully overruled. And if the answer not only denied the intention of the Company to use any of the funds of the Corporation, or their credit, to obtain the alteration in the Charter, and also denied all intent to apply their funds to the making of such change, until the new act was obtained, the bill should have been dismissed, upon the doctrine of Lord Brougham, that the act, when obtained, would be binding upon all the shareholders. But if this would be so in England, I have attempted to show that it must be attributed to the uncontrollable power of their Parliament, and that it could not be so under our Constitution. If the bill alleged that the Company were about not only to affix the corporate seal to a petition to Parliament, but also to use the corporate funds to defray the expense of getting the new act passed, as well as in converting the canal into a railway, and all this was not denied in the answer, the bill, upon the whole current of the English cases, should have been retained.

The Rutland and Burlington Rail-Road Company is but a private Corporation, so far as the stockholders are concerned; though as it regards the powers of the Legislature to authorize the taking of private property for public use, it may be said to be a *qua*-public Corporation. The stock is owned by individuals who compose the Corporation, and from which they design to derive a profit; and they manage the business in view to their own interest; and it does not become a public Corporation, because the public interest may be incidentally promoted by it. In principle, it is a turnpike, a canal or bridge Charter. Ten Eyck vs.

Delaware and Raritan Canal Company, 3 *Harr.* (N. J.) *Rep.* 22. I think it is obvious, beyond a reasonable doubt, upon principle and authority, that the plaintiff is not bound in his individual rights as a corporator, by force of the act of 1850, and the majority vote of the Corporation, without his individual assent. In the case of public corporations, as in towns, counties, &c., a different rule may obtain. The distinction between private and public associations and corporations, has been well settled since the days of Lord Coke. (*Coke, Little*, 181, b.)

In case of public associations and corporations, the public good requires that the voice of the majority should govern; and hence the power is more favorably expounded than when created for private purposes; and it would seem that public convenience required the adoption of such a rule. But in case of private associations and corporations, it is not the doctrine that a majority can bind the minority in a matter beyond and aside of their original articles of association or charter of incorporation, unless it be by special agreement giving such power, which must be a part of the original association.

If, in a case like the present, the majority cannot bind the minority, it is plain that there is an equity in this bill, and that the defendants can stand in no better situation than if they had by a vote of the Company proceeded to build the extension, and to apply the funds and credit of the Corporation to that purpose, without any additional act of the Legislature. The case of Livingstone vs. Lynch et al., 4 *Johns. Ch. Rep.* 573, was the case of a voluntary association, under the name of the North River Steamboat Company; and a majority, without the consent of the minority changed by a vote the articles of association, and proceeded in their business according to their new articles. The bill was brought by the plaintiff against the majority of the Company, to have the rights of the association reinstated on their former basis; and the Chancellor decreed the new articles *null and void*, and set up the old articles,

and enjoined all further proceedings under the new articles. In the case of Natusch vs. Irving et al., which was also the case of a voluntary association, an injunction was allowed to restrain them from going into a business not within the scope of the original articles, in pursuance of a vote of the majority. And in that case, before the hearing, the defendant had offered to pay back all that the orator had paid into the Company, with interest from the date of the payment, and also to fully indemnify him against all loss by the transactions of the Company, already had or thereafter to be had, in the business, which was beyond their original articles. Lord Eldon, to this part of the case, replies, in substance, that it is not competent for any number of persons, in a partnership (unless so provided for) formed for specified purposes, to effect that formation by calling upon some of their partners to receive back their capital stock and interest, and quit the concern, which, in effect, would be merely *compelling* them to retain upon such terms as should be dictated to them, so as to form a new Company; and that it is the *right* of a partner to hold his associates to the specified purposes, whilst the partnership continues, and not to rest upon indemnities with respect to what he had not contracted to engage in; and that a partner cannot be compelled to part with his shares, though for double what he originally gave for them; and that it may be his principal reason for keeping them, to have the partnership carried on according to the original contract. This doctrine of Lord Chancellor Eldon necessarily grows out of the doctrine, that it is the business of courts of justice to enforce the contracts of parties, *not make them.* To give to courts not only the power to enforce, but also power to make, or even modify in one iota a contract fairly made, would be the *rankest despotism.*

I am not ready to suppose the Directors, in procuring the act of 1850 to be passed, or the Corporation in accepting that act, acted in bad faith to any of the old stockholders; but doubtless they were governed by the most honorable

motives, and meant it for the best good of all concerned, notwithstanding the allegations in the bill, imputing bad faith to the Directors in obtaining the act of 1850. If it was, it would be very material to the merits of the question that the bill should be answered. The ground assumed is, that this Corporation had the funds of the original stockholders for an object distinctly defined in the original Charter, and that they cannot be allowed to apply them to any other purpose whatever, without the consent of the stockholders; and that, to do it, would be a breach of trust.

In regard to the expediency of bringing this bill, the Chancellor cannot, and has no right to judge. The orator has the constitutional and sole right of determining this matter; and if he thinks it expedient, we must acquiesce in it; and no plea of the public good, or inequality of interest involved, can justify the Chancellor in denying to the orator a right which is clearly accorded to him by well established Chancery principles. The public good is best promoted by an impartial administration of justice according to the right of the case; and courts cannot measure the equality or inequality of interests in the litigant parties, and make that a basis for a decision, notwithstanding what has been urged in the argument.

Where it is clearly shown that a Corporation is about to exceed its powers, and to apply their funds or credit to some object beyond their authority, it would, if the purpose of the Corporation was carried out, constitute a breach of trust; and a court of equity cannot refuse to give relief by injunction. See Aagar vs. The Regent's Canal Company, *Cooper's Equity Rep.* 77. The River Dan Navigation Company vs. North Midland Railway Co., 1 *Railway Cases*, 153–4. The case from the 1st vol. of Railway Cases was before the Lord Chancellor, and he uses this language: "If these companies go beyond the powers which the Legislature has given them, and in a mistaken exercise of those powers, interfere with the property of individuals, this Court *is bound* to interfere;" and that was Lord Eldon's

ground in Aagar vs. The Regent's Canal Company. The Lord Chancellor further adds: "I am not at liberty (even if I were in the least disposed, which I am not) to withhold the jurisdiction of this Court, as exercised in the case of Aagar vs. The Regent's Canal Company." In that case Lord Eldon proceeded simply on the ground that it was necessary to exercise this jurisdiction of Chancery for the purpose of keeping these companies within the powers which the acts give them. And it is added, "and a most wholesome exercise of the jurisdiction it is, because, great as the powers necessarily are, to enable the companies to carry into effect works of this magnitude, it would be most prejudicial to the interests of all persons with whose property they interfere, if there was not a jurisdiction continually open, and ready to exercise its power to keep them within their legitimate limits." It cannot justify the Chancellor in refusing to exercise the jurisdiction of Chancery, because the defendants may claim the right to proceed under color of the act of 1850. It is a settled principle, that the circumstance of the defendant's acting under color of law simply, can form no justification. The question, after all, will be, does the law justify the act which is being done, or threatened to be done? Osborn vs. The Bank of the United States, 9 *Wheaton*, 738. If a law is unconstitutional, it can give no authority. If the power it confers is abused or exceeded, the person acting under the color of law, is a wrong doer. In the case at bar the Corporation had no power to build the *extension* under their original Charter; and the act of 1850 is not binding upon the orator without his consent.

The injunction must therefore be allowed; but only so far as to restrain the defendants, until the further order of the Chancellor, from applying the present funds of the Corporation, or their income from their present road, either directly or indirectly, to the purpose of building said extension in said road, or to pay land damages and other expenses which may be contingent upon the building of it; and

also from using or pledging, directly or indirectly, the credit of the Corporation in effecting the object of the extension; and at the same time, the Company will be left at liberty to build the extension with any new funds which they may see fit to obtain for that specific object.

Though this is but an interlocutory degree, made upon the plaintiff's equitable rights as disclosed in the bill, still, it having been twice argued, and it being a case of considerable interest and importance, I have deemed it proper to publish, somewhat at length, the grounds of my opinion. "To err is human," and if, upon more mature consideration, the conclusions of my own mind shall be found to be unsound, and not in accordance with principle and authority, I rejoice that they may be corrected by a superior tribunal.

For plaintiff, Messrs. Maeck and Aldis.

For defendants, Messrs. Smalley & White, and Charles Linsley.

After the above decision was announced, and before the injunction was issued, the defendants proposed to file bonds to indemnify the plaintiff against all damages which he might sustain by reason of the extension: upon which the Chancellor suggested, that he did not deem it competent for him to make contracts for the parties; and that upon the authority of the case of Natusch vs. Irving et al., it could make no difference, if filed, in the result.

THE RIGHTS OF STOCKHOLDERS IN RAIL-ROAD CORPORATIONS.

It is stated in the public papers that some of the rail-road companies on the line from Buffalo to Albany, have engaged, in their corporate capacity, to take stock in the projected rail-road through Canada West, called the Great Western Road. They claim the right to do this, under a law of the Legislature of this state, passed at the last session, permitting them to subscribe for stock in this foreign corporation, provided they first obtain the consent of *two-thirds* of the stockholders to their engaging in the speculation. The remaining *one-third* of the stockholders are to be entirely disregarded; and however unwilling they may be to invest any portion of their property in this foreign corporation, it seems they are to be forced to do it by the compulsory action of their associate shareholders.

The subject suggests many questions as to what are THE RIGHTS of the owners of stock in the rail-road incorporations in this state, and how far those rights can lawfully be violated by an arbitrary majority of the stockholders, acting under permission of the Legislature.

It is obvious that the citizen who invests his capital in a rail-road in this state, does so with reference to the route of the road and its supposed productiveness and capacity to yield him a fair return upon his investment. He also knows who are at the time the managers of the road; and it may well be supposed that his view of the capacity of the line, and the skill and fidelity of the managers, taken together, *control* him in the selection of his investment. Having made his investments from these considerations, it is his *right* to be protected in it; and it is clearly *wrong* for

any Board of Directors, although they may obtain the consent of two-thirds of the stockholders, to divert the property of the other third from the investment they desire, and make them, against their will, stockholders in a foreign corporation.

If it were pretended that a majority of stockholders in any rail-road corporation in this state, could legally divert the funds of the company from their intended use, and engage them in any other business or speculation, as, for example, in banking, or in the purchase of produce, or in the importation of merchandise, the proposition would be scouted as monstrous; and it would not be deemed a justification, that the business thus engaged in might prove to be a profitable speculation to the company. The plain and unanswerable objection would remain, that this was not the business which the Legislature designed the company should carry on, when their act of incorporation was granted; and it was not the business in which the stockholders *agreed* to engage, by taking stock in the company.

And yet a speculation in banking, or in produce or merchandise, would no more be a departure from the original and legitimate object in the incorporation of the company, than is a diversion of its funds into a foreign country, to aid in the construction of foreign rail-roads.

The proximity or remoteness of the foreign country where the investment is made, does not affect the principle. If a speculation of this kind can be lawfully engaged in by the rail-road companies of this state in CANADA, it can be done with equal reason in any other part of the British Dominions, wherever situated. All that is required is, to obtain the consent of two-thirds of the stockholders, and (the Legislature consenting) the rail-road corporations of this state may embark in building rail-roads in Nova Scotia, Australia, or any other remote portion of the British Empire.

It cannot be possible that a principle which might lead to such extreme consequences, can be RIGHT, or can be lawfully authorized by two thirds or any other majority of stockholders in a corporation, against the express dissent of any number of stockholders who may be unwilling to have their property thus appropriated.

What would be thought of a law which should, in terms, *compel* A. to subscribe for stock in this Canada Road, and pay for it, provided only that his neighbors B. and C. should first consent to it? Its absurdity and injustice would be so glaring that nobody would justify it.

If A., B. and C. are copartners in mercantile business in New-York, what would be thought of *the firm* diverting its funds to a rail-road speculation in Canada, while only two of the partners consented, although the third should object? Lawyers would say that this would amount to a violation of the contract of partnership, and such a departure from its original object as would make it the duty of a court of equity to interfere by injunction and prevent it.

Can it make any difference that the copartners in a rail-road corporation are more numerous? Are the rights of individual stockholders thereby entirely lost? It is believed not. If they are, rail-road investments, instead of being as now, among the most safe and desirable, will soon come to be the least so.

The Utica and Schenectady Rail-Road Company was incorporated for the purpose of building a road from Schenectady to Utica. For the purpose of building, equipping and operating "that road," the stockholders contribute their money. By what process of reasoning can it be shown that any part of the funds of that company should be invested in a rail-road in Canada?

Many stockholders in the line of roads from Albany to Buffalo, believe the Canada Road, if made, would prove an utter failure, and that an investment in it would be a total loss; while others profess to believe it would be a paying stock. If those who urge this subscription believe that it will be a good investment, let them subscribe INDIVIDUALLY. If they have faith enough in its productiveness to risk their

own money in its construction, there is no need of involving the rail-road incorporations of the state in this foreign speculation. If they have no such faith, *why* should they seek to *compel* unwilling stockholders into this enterprise?

Those who favor this subscription, claim that the construction of the Canada road would prevent the Western travel from coming round the South shore of Lake Erie to Dunkirk and Buffalo; that it would take it across Canada to Niagara Falls, and thence over the Rochester and Albany lines of road to Albany and New-York. If this supposition is correct, their efforts tend directly to build up in Canada an interest confessedly hostile to the long lines of internal improvements commencing at the far West, and which, skirting the southern shore of Lake Erie, connect at Dunkirk and Buffalo with the avenues leading to New-York and the Eastern States. Buffalo would thus be thrown into a position of inevitable hostility to the Albany line of roads, and would probably divert from that route and throw upon the New-York and Erie Road a larger amount of travel than the Canada road would bring.

These are a few of the considerations which will suggest themselves to those who are interested in this question. Many others might be presented, but it is unnecessary.

It is an old adage, that "it is best to let well enough alone." The roads between Albany and Buffalo are now doing "well enough." Their stockholders are satisfied with their dividends. If they have surplus earnings beyond their dividends, most of them have existing debts; some to large amounts, to which they can apply them. The Directors of the rail-road companies of this state were chosen to manage the property of the stockholders already invested in their respective roads; not to look up new investments for them. It is to be hoped they will consult their stockholders fully, carefully and frankly, and get from them a very decided and preponderating expression in favor of this project, before they attempt to commit their respective companies to a policy to which it is well known that very many of the individual stockholders are hostile. G.

COMPULSORY SUBSCRIPTIONS TO THE CANADA RAIL-ROAD.

STATEMENTS have recently appeared in the newspapers to the effect that several of the rail-road companies between Albany and Buffalo have subscribed to the stock of the proposed road through Canada, called the Great Western Road. This statement is not wholly correct. It is believed that as yet, none of the roads have "subscribed."

The Utica and Schenectady Road, under the Presidency of Mr. Erastus Corning, *voted* to subscribe $200,000, provided the consent of two-thirds in amount of its stockholders should be obtained. There was a difference of opinion in the Board of Directors, as to the propriety of making the subscription; a portion of the Directors being strongly opposed to it, and one of them entering a formal *protest* against the action of the majority of the Board.

Among the Directors of the Utica and Syracuse Rail-Road Company, it is understood that there is an equal diversity of opinion as to this measure; and that a moiety at least, if not a majority of the Board, are openly hostile to it. The Board of Directors of this Company have not yet voted upon the question of subscription, but circulars have been authorized by a committee of the Board, and have been issued to take the opinion of the stockholders in relation to it.

In the Albany and Schenectady Company, and in the

Syracuse and Rochester Company, it is also known that there is a difference of opinion upon this subject, among the members of their respective Boards.

Commencing with these symptoms of internal controversy among the Directors, the question is now presented to the stockholders, and if two-thirds in amount of the stockholders in each road shall consent, it is proposed to make the subscription in spite of the wishes and remonstrances of the remaining one-third.

This is a most remarkable state of things, and it suggests the natural inquiry, what is the *object in view*, which is considered so important as to justify this attempt to array one portion of the stockholders against the other, and by the *mere force of numbers* to compel unwilling parties to invest their funds in a foreign speculation?

The *pretence* is, that the completion of the Canada Road will increase the business upon the central line of rail-roads through New-York.

Although this result is very seriously doubted by many stockholders, yet, if it is correct, it amounts to this: that the rail-road companies of this state are to be permitted to invest their funds in building rail-roads out of this state, wherever they would form an extension of their own line, and thus, either immediately or remotely, tend to increase their business. If this principle is sanctioned, what follows? The Canada Road is more than 200 miles distant from the nearest point of the Utica and Schenectady Road, which proposes to take $200,000 of its stock. If the Utica and Schenectady Company can take stock in a road 200 miles off, why not in a road 2,000 miles off; provided only that it is a part of the same general line? If it may invest $200,000 in such a road, why not $2,000,000? If it may own a part of the stock, and thus build a part of the road, why may it not own the whole of the stock, and build the entire road? The principle is the same; and if the Legislature authorizes the rail-road companies of this state to speculate on the funds of foreign companies at all, they may, with

equal propriety, permit them to do it, to any extent which they may deem their interests to require.

It is proposed by these companies to take $500,000 in the stock of the Canada Road, and at least one of the companies has announced to its stockholders that it can pay its proportion of the amount, ($200,000,) without interfering with its already large annual dividends. If this is so, this $200,000 should be divided among its stockholders, and then let those who desire to make this investment, subscribe *individually*, leaving the other stockholders to act independently upon the subject.

But there is a consideration here, affecting parties other than the stockholders in the road.

At the time of the adoption of the present constitution, the rail-roads between Albany and Buffalo, running along the line of the Erie Canal, were chargeable with *tolls* upon property transported by them during the season of canal navigation. These *tolls* were payable into the State Treasury, and formed a portion of the revenues of the state, which, by the constitution, were sacredly pledged to the payment of the principal and interest of the state debt. It was claimed by the companies that these tolls were a burden from which they should be relieved; and under the pressure of a rail-road lobby, unequalled in the history of our state legislation, the passage of an act was procured last winter, relieving these companies from the payment of tolls. This act was one of very questionable constitutionality; and if it shall appear that the money thus withheld from the State Treasury is to be expended in a foreign state, in the construction of a line of rail-road, forming a link in the great chain of projected Canada roads, designed to extend through the entire length of Canada West, by way of London, Hamilton, Toronto and Kingston, to the St. Lawrence, thus carrying the trade and travel of the West, north of Lakes Erie and Ontario, and entirely beyond our own state, and its works of internal improvement, it is high time for the Legislature to revise their action and

restore the tolls which the law had imposed, and which the constitution has appropriated. Rail-road companies whose earnings are so enormous that they can divide their 10 or 15 per cent. per annum, and still have ample funds left to embark in rail-road speculations in foreign states, can hardly complain, if they are required to pay into the Treasury of the state, whose legislation created and protects them, a reasonable toll upon property, the transportation of which they divert from the public canals.

If these Corporations, with their inflated capitals, already increased, by extra dividends, to three and four times their original amount, can continue their large dividends, and still afford the means to embark so extensively in foreign enterprises, it is quite clear that a line of new and rival roads from Albany to Buffalo, which can be built for one-half the amount of the stocks of the present companies, would be a most productive investment; and nothing would conduce more surely to the construction of such a line than a successful combination of these companies as now proposed, to build up through Canada, a road confessedly hostile to the majority of the rail-road interest of the state of New-York.

The projected Canada Road, it is estimated, (by those who urge this subscription,) can be built for about $6,000,000. The means are proposed to be procured as follows:

1. Stock taken in Canada by Municipal Corporations, ...	$550,000
2. Stock taken by Individuals, ...	240,000
3. Stock yet to be procured, ...	60,000
4. Stock to be taken by Contractors, . . .	800,000
5. Stock subscriptions to be obtained in the United States, ...	1,000,000
	2,650,000
6. A *debt* to be contracted by the Road, . .	2,650,000
	$5,300,000

Here, then, it appears that the stock is all to be taken with the existing incumbrance of a debt of equal amount.

The history of rail-roads shows that estimates of cost when put forth with a view to obtain subscriptions, are very unreliable. It is safer to rely upon ascertained facts than upon any conjecture of Engineers or Committees.

It is said that the general *face* of the *country* in Canada is much like that in Michigan. We will assume, therefore, that this Canada Road may be built and equipped for the same cost as the Michigan Central Road, which is the same length, 228 miles. Assume, also, that this cost is represented in the same way by

$2,638,000 Capital stock.
$4,000,000 Debt.

$6,638,000.

Assume, also, that the annual cost for operating the road (including interest) is equal to that on the Michigan Central Road for the year ending 1st June, 1851, being according to their official report, $678,300.

Now it is perfectly well understood, that the proposed Canada Road, for most of its distance, passes through a country which is thinly settled, and therefore affords but very little local business, while the Michigan Central Rail-Road traverses a country dotted with thriving towns and villages, affording a large and increasing local traffic. Persons well qualified to judge, believe that the local business upon the Canada Road would pay but a very small fraction of its expenses; but to put it upon the most favorable footing, suppose that its local business shall be equal to *one-half* of that of the Michigan Central Road.

Now, as to its *through business*. The through business of the Michigan Central Road for the last year, was derived from a line which, (for through business,) had a perfect monopoly. After this year, that business will be divided (in what proportion does not concern this question) with

the Michigan Southern, and Northern Indiana Roads. As the Canada Road must compete with the line of roads around the south shore of Lake Erie, and also, for most of the year, with the Lake itself; and upon passengers and freight must be subjected to Custom House regulations and charges, it cannot be claimed that its through business would exceed *one-half* the through business of the Michigan Central road for the last year.

Assuming these data as correct, we state the earnings and expenses of the Canada Road as follows:—

Mich. Central Road, year ending 1st June, 1851.		Income, Canada Road.
Local business,	$656,830	$328,415
Through business,	310,274	155,187
	$967,104	$483,602
Annual operating expenses (including interest,)		678,300
Annual deficiency,		$194,698

Or if it is alleged that this is an unfair way of stating the matter, put it in this form:

Annual income as above,	$483,600
Operating expenses, (exclusive of interest,) 40 per cent.,	173,600
	$310,000
Interest upon $4,000,000 of debt, at 6 per cent.,	240,000
Net income,	$70,000

About 3 per cent. upon the capital stock.

When it is remembered that the New-York and Erie Road, originally estimated at $10,000,000, has cost $24,000,000; that the Hudson Rail-Road, originally estimated at $6,000,000, has cost $9,000,000, and is still incompleted; and that other similar works have, in their cost, shown similar variations from the original estimate, it will readily be believed that this Canada Road, which now owns up to a cost of $6,000,000, will, in the end, cost nearer $10,000,000; and if so, far from paying fair dividends upon its stock, its earnings will be insufficient to pay its operating expenses and interest upon its debt. It follows that large sums must be advanced by the stockholders to make up the deficiency.

And when it comes to making up these large deficiencies and carrying on the road, irrespective of cost or profits, then the New-York roads will see why it is that they are so important as stockholders: for being wealthy corporations, the most responsible, if not the only responsible stockholders, they will be compelled, in sheer self-defence, and to protect the investment already made, to advance the entire deficiency. In short, they are needed to "foot the bills." Thus their half million investment may, in the end, become two or three millions; and the property which confiding stockholders have intrusted to their agents to be invested in the favorite line between Albany and Buffalo, may, before they are aware of it, be scattered broad-cast, in this reckless and improvident expenditure in Canada.

Let this rash and reckless trifling with the property of other people be stopped. Give to all those who desire to invest their own individual funds in this Canada project, the most ample liberty to do so; but prevent them from compelling others, against their wishes, into the speculation!

The truth is, this whole project was conceived by, and is now attempted to be forced through, to promote the supposed interests of the Michigan Central Rail-Road Company. Its most active supporters and advocates are the directors, officers and stockholders of that corporation. The "report upon the merits of the Great Western Rail-Road in Canada West, *by a Committee of its American friends*," was signed by J. M. Forbes, President of the Michigan Central Rail-Road Company, J. W. Brooks, Superintendent, Engineer

and Director of that Company, Erastus Corning, Director in that Company, and Henry Ledyard and Henry N. Walker, both residents of Detroit, and well known partizans of that Company. What New-York interest, pray, is represented in that Committee? It is a Boston interest—a Michigan interest—in short, the Michigan Central Rail-Road interest, which constitutes the Committee, and speaks through it.

We are not left to conjecture on this subject. The Michigan Central Rail-Road Company, in their last official report, in June last, say:

"But what we consider most important, is the opportunity now offered of securing the immediate completion of the Great Western Rail-Road from Niagara Falls to Detroit. We endeavored to obtain leave from the Michigan Legislature to assist this road by a subscription to its stock, but were defeated, notwithstanding the great interest which the people of the state had in our success, by the provision in the constitution requiring a vote of two-thirds of the Legislature for the passage of such an act.

"We have, nevertheless, placed ourselves in communication with the Great Western Company, who are ready to do all we can reasonably ask to meet our views, and we *would now most earnestly* call upon you to subscribe individually to the stock of that Company. The citizens of Detroit will undoubtedly do their share; the New-York Rail-Road Companies are authorized by law to subscribe, and those in line with us, we have every reason to believe, will do so. And to secure the immediate completion of 228 miles of road, which will make our route decidedly the best between New-York and New-England and the Great West, these united interests have only to provide for one-fifth of the cost of the Canada Road."

It is to assist in the consummation of this scheme, "to secure the immediate completion of 228 miles of a road which will make *our* (the Michigan Central) route decidedly the best between New-York and New-England and the

Great West," to build this road for the Great Western Company, with whom *we* (the Michigan Central Company) "placed ourselves in communication," and who "are ready to do all *we* can reasonably ask *to meet our views*," (the views of the Michigan Central Company;) it is for such objects and purposes that the stockholders in the New-York roads are to be solicited, cajoled, and if need be, *compelled*, by a vote of two-thirds of their associate stockholders, to subscribe to the stock of this Canada Road!

It remains to be seen whether two-thirds of the stockholders in the respective roads will consent to this subscription; and if so, whether the various Boards of Directors will attempt to *coerce* the remaining one-third, into an investment opposed to their judgment and their interests. Should this prove to be the case, the minority will be compelled to resort to the Legislature and the Courts, to determine how far their right to their own property is protected by the law, and to test the question whether the investment which they made and desire to retain within the limits and protection of the state, can be taken from them against their will, and, to answer the purpose of interested speculators, be transferred to a foreign jurisdiction.

A STOCKHOLDER.

END OF
TITLE